

MODEL ELIGIBLE DOMESTIC RELATIONS ORDER

FOR RETIREES OF THE

STATE RETIREMENT AND PENSION SYSTEM

OF MARYLAND

**Important: This Model is presented
for informational purposes only, and
should not be taken as legal advice.**

State Retirement Agency of Maryland
November 29, 2004

Introduction

This Model Domestic Relations Order (“Model”) contains model language for attorneys who are involved in the preparation of a Domestic Relations Order (“DRO”) that addresses the plan benefits of a retiree of the State Retirement and Pension System of Maryland (“MSRPS”). A separate model is provided for members and former members of the MSRPS.

The Board of Trustees for the MSRPS has revised its regulations governing the review and administration of DROs, effective October 11, 2004. The purpose of the revised regulations and this Model is to make it easier for parties in a divorce to ensure that a DRO will be eligible for processing by the Agency. **The Model and this introduction are presented for informational purposes only, and should not be taken as legal advice.** The Agency does not advise participants, former spouses (“alternate payee”), or attorneys about how to draft a DRO that best suits the wishes and intentions of the parties. This is the task of the attorneys and parties involved. The Agency’s role is ministerial. The requirements that must be satisfied for the Agency to honor a DRO are set out in Division II of the State Personnel and Pensions Article (“SPP”), Md. Code Ann., and in COMAR 22.01.03.

The following points should be considered:

1. **Exemption from ERISA.** As a government-sponsored plan, the MSRPS is exempt from Title I of the Employees Retirement Income Security Act of 1974 (“ERISA”). A DRO that references ERISA, the Internal Revenue Code, or is labeled as a Qualified Domestic Relations Order or “QDRO” will not be accepted. Unlike ERISA plans, in the absence of an appropriate court order, a participant may take any action with regard to his or her benefits without any notice or consent. Additionally, an alternate payee’s rights are entirely derivative of the participant’s rights. To that end, an alternate payee may not elect beneficiaries or choose retirement options.
2. **Plan Benefit.** A DRO should clearly identify the types of plan benefits that are to be divided by the court. The amended regulations and this Model provide some detail as to what constitutes a “plan benefit,” and are designed to give the most commonly used meanings to words most often encountered in DROs. However, with more than 11 separate systems and subsystems in the MSRPS, the regulations and this Model cannot address each type of benefit that may be available to a participant in a particular system. Before drafting, attorneys are advised to consult a benefits handbook or contact a retirement counselor at the Agency to acquaint themselves with the various benefits that are available under the member’s plan. Retirement counselors are available by

telephone at (410) 625-5555, or (800) 492-5909. Benefits information, including the benefits handbook for several of the systems, is also available on the MSRPS website, www.sra.state.md.us.

3. **Allowance.** Unless otherwise specified, the term “allowance” is defined by regulation to include the following: service retirement allowance, disability retirement allowance, vested allowance, and cost of living adjustments. Additionally, except in situations where the statute requires payment exclusively to a surviving spouse, minor child, or dependent parent, the term allowance includes a lump sum payment of the amount accrued in the Deferred Retirement Option Program on termination of participation.
4. **Marital Share Formula.** Under the Board of Trustees’ regulations, the Alternate Payee’s share of a plan benefit may be expressed as a fixed dollar amount, a fixed percentage, or a formula that *clearly divides* a plan benefit. The regulations provide criteria for the acceptance of a formula to divide a plan benefit. Typically, parties use the following formula to divide the plan benefits earned during a marriage:

$$\frac{\text{Total months of marriage during which participant accrued service credit}}{\text{Total months of Service credit}} = \text{The “Marital Share Fraction”}$$

$$\text{Alternate Payee’s share} = \text{Marital Share Fraction} \times \text{___\%}$$

This formula is described in the Model as follows:

The alternate payee’s share of the participant’s allowance is declared to be the “marital share fraction” multiplied by ___%. The “marital share fraction” is the following fraction: the numerator is the total number of months of the parties’ marriage during which the PARTICIPANT accumulated service credit in the MSRPS, up until and including the date of the Judgment of Divorce, and the denominator is the total number of months of the PARTICIPANT’S service credit in the MSRPS.

5. **Post-Retirement Survivor Benefits.** Some plans within the MSRPS permit a member, at retirement, to select a reduced form of allowance that will provide for post-retirement survivor benefits to a designated beneficiary. Six types of optional post-retirement survivor benefits are described at SPP §21-403. Several points should be considered:

- a. ***No change of retirement option.*** A retiree is not permitted to change his or her retirement option after the first payment is made. Thus, the parties can only divide the survivor benefit selected by the retiree, if any, at the time of retirement.
- b. ***One beneficiary.*** Four of the options provide for monthly payments to a designated beneficiary for life. For such “optional survivor allowances,” only *one* individual may be designated to be the beneficiary. SPP §21-402(b). Thus, if the parties wish to designate the alternate payee as the beneficiary of an optional survivor allowance, the DRO must provide that the retiree shall designate the alternate payee as the sole primary beneficiary. The amount of a survivor allowance is based on the life expectancy of the participant and the designated beneficiary. **It is important to note that the change in a designated beneficiary will result in a change in the amount of the allowance payable to the participant and alternate payee.**
- c. ***Spousal Survivor Benefits for State Police Retirement System, Law Enforcement Officers’ Pension System, and Judges’ Retirement System.*** Some plans, such as the State Police Retirement System, Law Enforcement Officers’ Pension System, and the Judges’ Retirement System, provide post-retirement survivor benefits to participant’s current surviving spouse or minor child rather than to a designated beneficiary. Because such survivor benefits are payable by virtue of the surviving spouse’s or minor child’s status, no portion of these benefits can be assigned to an alternate payee under a DRO. However, if the participant was not married at the time of retirement, he or she may have selected an option that provides for post-retirement survivor benefits.

IMPORTANT INSTRUCTIONS FOR USING THE MODEL

This model provides a basic format for use in preparing a DRO. Various alternatives for dividing benefits are offered. **THIS MODEL IS NOT INTENDED AS A CHECK-OFF FORM. ANY ALTERNATIVES THAT ARE NOT SELECTED MUST BE REMOVED FROM THE DRO BEFORE SUBMISSION.** To prevent confusion in the administration of a DRO, the Agency will not accept a DRO that contains options that are not chosen by the parties.

_____ Plaintiff	*	IN THE
v.	*	CIRCUIT COURT
_____ Defendant	*	FOR
	*	_____
	*	Case No. _____
* * * * *	* * *	* * *

ELIGIBLE DOMESTIC RELATIONS ORDER

Upon consideration of the Judgment of Absolute Divorce entered in the above-captioned case, it is this _____ day of _____, _____, ORDERED,

1. This Order relates to the disposition of certain benefits of [(name of PARTICIPANT)] to be provided by the [name of individual system] (“participant’s plan”), which is part of the STATE RETIREMENT AND PENSION SYSTEM OF MARYLAND (“MSRPS”).
2. The parties hereto were married on [(date of marriage)], and this Order is entered incident to a final Judgment of Absolute Divorce entered on [(date of divorce)].

3. The PARTICIPANT is identified as follows:

Name: [name of PARTICIPANT]
Address: [address]
Date of Birth: [date of birth]
Social Security No: [social security number, or state that “the PARTICIPANT’S social security number is provided in the letter transmitting this Order to the MSRPS.”]
Date of Retirement: [the effective date of the PARTICIPANT’S retirement]

4. The ALTERNATE PAYEE is identified as follows:

Name: [name of ALTERNATE PAYEE]
Address: [address]
Date of Birth: [date of birth]
Social Security No: [social security number, or state that “the ALTERNATE PAYEE’S social security number is provided in the letter transmitting this Order to the MSRPS.”]

5. The administrator of the MSRPS is:

State Retirement Agency of Maryland (“AGENCY”)
120 East Baltimore Street
Baltimore, Maryland 21202
Attn: Eligible Domestic Relations Orders

6. To accommodate the marital property distribution between the parties, in accordance with Md. Code Ann. Family Law Article, §§ 8-202 and 8-205 and

COMAR 22.01.03, IT IS HEREBY ORDERED AS FOLLOWS:

A. **Allowance.** The ALTERNATE PAYEE’S share of the PARTICIPANT’S allowance is declared to be

(Choose Alternative i., ii. or iii.)

i. [\$ _____ dollar amount]

ii. [_____ percentage]

iii. percentage (%) multiplied by the “marital share fraction.” The “marital share fraction” is the following fraction: the numerator is the total number of months of the parties’ marriage during which the PARTICIPANT accumulated service credit in the MSRPS, up until and including the date of the Judgment of Divorce, and the denominator is the total number of months of the PARTICIPANT’S service credit in the MSRPS.

B. Post-retirement survivor benefit.

(Choose Alternative i. or ii.)

- i. No share of any post-retirement survivor benefit is assigned to the ALTERNATE PAYEE under the terms of this Order.
- ii. At retirement, the PARTICIPANT selected a post-retirement survivor benefit and elected Optional Allowance Number .

(If Alternative ii. is selected, also choose (1), (2) or (3).)

- (1) The PARTICIPANT shall maintain the ALTERNATE PAYEE as the sole primary beneficiary of the post-retirement survivor benefit, for the ALTERNATE PAYEE’S lifetime.
- (2) The PARTICIPANT shall complete the procedures necessary to CHANGE his current beneficiary designation and designate the ALTERNATE PAYEE as the sole primary beneficiary of the post-retirement survivor benefit, for the ALTERNATE PAYEE’S lifetime.

- (3) If a post-retirement survivor benefit is payable with respect to the PARTICIPANT, and if the ALTERNATE PAYEE survives the PARTICIPANT, the ALTERNATE PAYEE'S share of the post-retirement survivor benefit payable with respect to the PARTICIPANT is declared to be:

(If Alternative ii.(3) is selected, also choose Alternative (a), (b) or (c))

(a) [\$_____ dollar amount]

(b) [____ percentage]

(c) [____ percentage (%)] multiplied by the "marital share fraction," as defined in paragraph 6A.

C. Method and timing of payment; restrictions. MSRPS is hereby directed to make payments of the ALTERNATE PAYEE'S share directly to the ALTERNATE PAYEE, if, when, and as payments of PARTICIPANT'S Plan Benefit are made to PARTICIPANT, in any form selected by the PARTICIPANT that is permitted by the participant's plan. The ALTERNATE PAYEE'S share may not exceed the amount of the PARTICIPANT'S plan benefit.

D. Obligations of Alternate Payee. It is the obligation of the ALTERNATE PAYEE to promptly: (a) provide the AGENCY a certified copy of this Order, and modifications or amendments hereto; (b) notify the AGENCY in writing of any change of name or address; and (c) comply with all reasonable requests from the AGENCY for information and documentation necessary for

processing payment of all or any portion of a PARTICIPANT'S plan benefit to the ALTERNATE PAYEE.

- E. **Obligations of Participant – not obligations of MSRPS OR AGENCY.** It is the obligation of the PARTICIPANT to promptly: (a) notify the AGENCY in writing of any change of name or address; and (b) comply with all reasonable requests from the AGENCY for information and documentation necessary for processing payment of all or any portion of a PARTICIPANT'S plan benefit to the ALTERNATE PAYEE. Additionally, the PARTICIPANT is responsible for completing and submitting any applications or forms required by the AGENCY to effectuate any provision of this Order, including, but not limited to, any form required by the AGENCY to designate the ALTERNATE PAYEE as beneficiary. If the PARTICIPANT takes any action in contravention of any provision of this Order, including, but not limited to, this Paragraph 6, the PARTICIPANT shall bear the sole and exclusive liability for such action, and not the MSRPS or the AGENCY.
- F. **Tax consequences of payments.** All payments to the ALTERNATE PAYEE by the MSRPS shall be includable in the taxable income of and taxable to the ALTERNATE PAYEE. After-tax contributions shall be allocated to the parties in the same proportion as the total amount of the ALTERNATE PAYEE'S share bears to the PARTICIPANT'S total plan benefit.

7. This Court retains jurisdiction to amend this Order for the purpose of its acceptance and/or administration by the MSRPS or any transferee retirement

system or to effectuate the terms of the parties' Settlement Agreement and/or
Judgment of Divorce.

Judge,
Circuit Court for _____

Consented as to form:

PARTICIPANT

ALTERNATE PAYEE

Attorney for Participant
[Address and telephone]

Attorney for Alternate Payee
[Address and telephone]